

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

0.062 ACRES OF LAND, MORE OR LESS,
SITUATED IN STARR COUNTY, STATE OF
TEXAS; AND JOSE ROEL MONTALVO,
ET AL.,

Defendant.

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CASE NO.: 7:20-CV-400

UNITED STATES' ADVISORY TO THE COURT

The Plaintiff, United States of America, files this Advisory in response to the District Court's April 8, 2021, Order¹ to inform the Court of (1) the United States' failure to serve Defendant Jose Roel Montalvo for over four months after he was named as an interested party in this case and (2) for the United States' failure to contact all Defendants in this case before submitting the discovery/case management plan.

United States' Failure to Serve Defendant Jose Roel Montalvo

1. On December 8, 2020, pursuant to the Declaration of Taking Act (40 U.S.C. § 3114), and Federal Rule of Civil Procedure 71.1, the United States commenced this condemnation action by filing a Complaint in Condemnation² and Declaration of Taking³ to acquire a fee simple interest in property identified as Tract RGV-RGC-2049.⁴

¹ Docket No. 20.

² Dkt. No. 1.

³ Dkt. No. 2.

⁴ Schedules "C," "D," & "E," Dkt. No. 1.

2. As part of this condemnation action, the United States named Defendants Jose Roel Montalvo, Jr., Ninfa Montalvo Mireless, Edna Montalvo Cantu, Anna (Ana Marie) Montalvo Garza, among others, as having an interest in the just compensation to be paid by the United States for the taking of Tract RGV-RGC-2049.⁵

3. The United States attempted to serve Jose Roel Montalvo, Jr. at 567 Ebano Street, Roma, Texas 78584, which was his usual place of abode, twice on January 19, 2021 and again on January 20, 2021.⁶

4. On January 19, 2021, at 3:43 PM, the process server attempted to serve Jose Roel Montalvo, Jr. at his usual place of abode at 567 Ebano Street, Roma, Texas 78584, but was unsuccessful as the property was both gated and locked, making it inaccessible.⁷

5. On January 19, 2021, at 7:29 PM, the process server was unable to serve Jose Roel Montalvo, Jr. at 567 Ebano Street, Roma, Texas 78584, and noted the property was again gated and locked, the lights were off, and no vehicles were present.⁸

6. On January 20, 2021, the process server was unable to serve Jose Roel Montalvo, Jr. at his usual place of abode, but was able to confirm with his sister, Ninfa Montalvo Mireless, that the house located at 567 Ebano Street, Roma, Texas 78584 was vacant, and that Jose Roel Montalvo now resides in a nursing home in Edinburg, Texas.⁹

7. On March 1, 2021, the United States received the Declaration of Not Found, executed by process server, Gilbert J. Villarreal. Mr. Villarreal signed the affidavit under oath on February 26, 2021.¹⁰

⁵ Schedule “G,” Dkt. No. 2.

⁶ Dkt. No. 17.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

8. Between March 1, 2021 and March 8, 2021, attempts were made to identify a valid address to serve Jose Roel Montalvo, Jr. Both Ninfa Montalvo Mireless and Anna (Ana Marie) Montalvo Garza were unable to produce the location and name of the facility where their brother, Jose Roel Montalvo, Jr. resides. After a week of unsuccessful attempts to locate the nursing home, on March 8, 2021, the United States filed the Declaration of Not Found.¹¹

9. In the Joint Discovery Management Plan, filed on April 2, 2021, the United States indicated the remaining unserved Defendant, Jose Roel Montalvo, Jr., will be served via publication in accordance with Fed. R. Civ. P. 71.1(d)(3)(B).¹²

10. On April 9, 2021, the United States corresponded with Anna (Ana Marie) Montalvo Garza via telephone and finally learned that her brother, Jose Roel Montalvo, Jr. resides at Rio Grande City Nursing Home and Rehabilitation Center, 2530 Central Palm Drive, Rio Grande City, TX 78582. Therefore, Jose Roel Montalvo, Jr.'s physical location differs from the previously stated location of Edinburg, Texas, made by his sister, Ninfa Montalvo Mireless.¹³

United States' Failure to Contact All Defendants

11. In the Joint Discovery Management Plan, it was noted, pursuant to Rule 26(f) Federal Rules of Civil Procedure, AUSA J. Parker Gochenour conferred via phone and email with Ms. Anna (Ana Marie) Montalvo Garza on March 26, 2021.¹⁴ Moreover, the United States indicated, "[I]t should be noted for the Court that Ms. Montalvo Garza is acting as a spokesperson for her siblings: Jose Montalvo, Jr., Ninfa M. Mireless, and Edna Cantu."¹⁵ However, despite Anna Montalvo Garza's position as a spokesperson, the opinions of her

¹¹ *Id.*

¹² Dkt. No. 18.

¹³ Dkt. No. 17.

¹⁴ Dkt. No. 18.

¹⁵ *Id.*

siblings were not explicitly captured in the statement, “[T]he United States conferred with Ms. Montalvo Garza on March 26, 2021 regarding this case management plan and expressed no interest in participating.”¹⁶

12. At the time of the filing of the Joint Discovery/Case Management Plan, while all Defendant’s claimed an interest in the subject property, they did not intend to participate in the drafting of the case management plan. Moreover, Ms. Montalvo Garza, on behalf of her siblings, Jose Montalvo, Jr., Ninfa M. Mireles, and Edna Montalvo Cantu, stated the family members are supportive of revestment, provided it becomes an option.¹⁷ Ms. Montalvo Garza also indicated she will execute an affidavit of heirship for both of her parents, Ms. Eusebia Montalvo and Mr. Jose Montalvo, allowing for the dismissal of the unknown heirs of Eusebia Montalvo and Jose Montalvo.¹⁸

13. To provide further clarification for this Court, regarding Anna Montalvo Garza’s spokesperson position and relationship with her siblings in this case, AUSA J. Parker Gochenour attempted to contact Jose Roel Montalvo, Jr., Ninfa M. Mireless, and Edna Cantu.

14. On April 9, 2021, AUSA J. Parker Gochenour contacted Ninfa Mireless via telephone about her participation in the Joint Discovery Case Management Plan and her sister, Anna Montalvo Garza’s role in this case. Ninfa Mireless stated, “What she (referring to Anna Montalvo Garza) says goes.” She stated, “She’s (referring to Anna Montalvo Garza) the one, she’s the one in charge.” Ninfa Mireless also mentioned, she “Doesn’t want anything to do with it.”

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

15. On April 9, 2021, AUSA J. Parker Gochenour contacted via telephone Edna Cantu about her participation in the Joint Discovery Case Management Plan and her sister, Anna Montalvo Garza's role in this case. Edna Cantu stated, "She (referring to Anna Montalvo Garza) is in charge." She also indicated, "We leave everything to her (referring to Anna Montalvo Garza), because she is the main one."

16. On April 9, 2021, AUSA J. Parker Gochenour attempted to contact via telephone Jose Roel Montalvo, Jr. twice about his participation in the Joint Discovery Case Management Plan and his sister, Anna Montalvo Garza's role in this case. Multiple messages were left with the administrator of the Rio Grande City Nursing Home and Rehabilitation Center, Jose Roel Montalvo, Jr.'s residence. The facility's administrator communicated to the United States that Jose Roel Montalvo, Jr. does not have a telephone, but the facility would facilitate a telephone call with the United States on April 9, 2021. As of this filing, no contact has been made with Jose Roel Montalvo, Jr.

CASE MANAGEMENT DEADLINES

17. The United States did not learn of the whereabouts of Jose Roel Montalvo, Jr. until after the most recent publication proof was drafted and approved for printing. Therefore, Jose Roel Montalvo, Jr. is currently listed on a publication schedule set to begin this week. The United States has been in contact with PCP, its process server, and is hopeful Jose Roel Montalvo, Jr. will be served via personal service at his known residence of Rio Grande City Nursing Home and Rehabilitation Center, 2530 Central Palm Drive, Rio Grande City, TX 78582 within the next few days. As soon as the United States receives a return from PCP, the United States will file the return with this Court.

CERTIFICATE OF CONFERENCE

18. The United States conferred with Anna Montalvo Garza, Ninfa M. Mireless, and Edna Montalvo Cantu, regarding the contents of this advisory via telephone, on April 9, 2021. Each was unopposed to its contents. The United States attempted to contact Jose Montalvo, Jr on April 9, 2021 regarding this Advisory but was unsuccessful.

Respectfully submitted,

JENNIFER B. LOWERY

Acting United States Attorney
Southern District of Texas

By: *s/ J. Parker Gochenour*

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CERTIFICATE OF SERVICE

I, J. Parker Gochenour, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 12th day of April, 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

By: *s/ J. Parker Gochenour*

J. PARKER GOCHENOUR

Assistant United States Attorney